

IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 22090 OF 2007

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Dated : October 12, 2007

Between:

Smt. P.Nagamani

Petitioner

AND

Government of Andhra Pradesh,
Rep. By its Principal Secretary,
Health, Medical & Family Welfare (VC-1(1) Department,
Secretariat, Hyderabad and others

Respondents

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 22090 OF 2007

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ORAL ORDER: (per THE HON'BLE MRS. JUSTICE T.MEENA
KUMARI)

Seeking a writ of mandamus directing the A.P.

Administrative Tribunal, Hyderabad, to hear and dispose of O.A. No. 871 of 2007 pending before it, strictly within the scope of the *lis* between the parties within a timeframe, the applicant in the said O.A. filed this writ petition.

The petitioner herein filed the above O.A. before the Tribunal assailing GO Rt. No. 661, Health, Medical & Family Welfare (VC(1) Department dated 21.6.2005 issued by the first respondent to the extent of transferring the petitioner out of the District, and the consequential orders that emerged therefrom, as illegal and arbitrary.

Few facts, that are necessary for disposal of this writ petition, are that the petitioner was appointed as Pharmacist Grade-II on 16.4.1991 and posted at Nallajerla Primary Health Centre and thereafter she was transferred to Venkata Ramanagudem Primary Health Centre, on 2.4.1994. While so, on 1.11.2001, the Anti Corruption Bureau Officials conducted a surprise check and Crime No. 2/ACB-RCO-EWG/20023 came to be registered under Prevention of Corruption Act, wherein one Dr. S.Venkata Ranam was arrayed as accused No.1 and Smt. M. Narayanamma, Public Health Nurse and the petitioner were arrayed as Accused Nos. 2 and 3 respectively. Consequently, under different government orders, all the three accused were placed under suspension and sanction for prosecuting them was also accorded.

Subsequently, the suspension of accused No.1, the doctor, and the petitioner was revoked and they were posted at non-focal points. The doctor (A-1) was posted at Rowthalapudi, East Godavari District whereas the petitioner was posted at Koyyalagudem, West Godavari District. But, subsequently, the doctor, was posted back to Tadepalligudem, West Godavari District, promoting him as Civil Assistant Surgeon on 3.4.2006 and also promoted as Deputy Civil Surgeon on 17.7.2006, whereas, the petitioner was transferred for the second time to Pedakallepalli in Krishna District, which is out of the unit of appointment, by proceedings dated 8.3.2006, on the ground of pendency of criminal case. Before the Tribunal, petitioner challenges action of the authorities in posting back the doctor giving two promotions, against whom the gravity of charge is more, being Accused No.1 in the criminal case apart from a second criminal case booked against him, and transferring the petitioner out of district of appointment, as discriminatory, illegal and hit of Article 14 of the Constitution of India

It is further averred that though counter is filed before the Tribunal, the Tribunal instead of disposing of the O.A. on merits, orally directed the learned Government Pleader to shift the doctor from Tadepalligudem and directed the matter to be listed immediately after Dasara vacations, which amounts to travelling beyond the scope of the O.A. and, thus the Tribunal erred in exercising its jurisdiction in

directing the learned Government Pleader to shift the doctor instead of deciding the *lis* between the parties, on merits.

The involvement of the petitioner, the doctor and another, in a criminal case registered by the Anti-Corruption Bureau and their suspension and reinstatement is not disputed in the counter. Similarly, posting of the doctor and the petitioner at non-focal points is also not in dispute. It is averred in the counter that the Government has examined the matter of posting of the petitioner, Pharmacist in West Godavari District, and observed that as per the instructions issued in Presidential Orders, 1975, Government can exercise the power to transfer a Government employee who is facing disciplinary cases to any place outside the unit of appointment including another district on administrative grounds. It is also stated that the discrimination alleged to have been caused to the petitioner by posting back the doctor, who is A-1, was also considered by the Government and rejected the representation made by the A.P. NGO's for retention of the petitioner, in public interest.

As can be gathered from the affidavit, both the parties have advanced their arguments and the petitioner has filed written arguments before the Tribunal. It is also evident that the Tribunal has directed the O.A. to be listed immediately after Dasara Vacations. Evidently, the matter

is subjudice before the Tribunal and if any finding is recorded by this Court on merits on the contentious issues that are raised, it amounts to pre-empting the Tribunal from delving on such contentious issues raised before it. Therefore, without expressing any opinion on merits, we dismiss the writ petition at the stage of admission, inasmuch as the issue is subjudice before the Tribunal. No order as to costs.

T.MEENA KUMARI, J.

G.CHANDRAIAH, J.

October 12, 2007
MAS